TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1943

No. 18

THAD BENSON CARTER, PETITIONER,

vs.

GEORGE A. KUBLER

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR CERTIORARI FILED FEBRUARY 19, 1943.

CERTIORARI GRANTED APRIL 5, 1943.

IN THE

United States Circuit Court of Appeals

For the Sixth Circuit

No. 9165

In the Matter of
THAD BENSON CARTER,
Farmer Debtor.

THAD BENSON CARTER,
Appellant.

v.

GEORGE A. KUBLER,
Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO, EASTERN DIVISION

TRANSCRIPT OF RECORD.

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Northern District of Ohio,
Eastern Division—ss:

Record of proceedings of the District Court of the United States within and for the Eastern Division of the Northern District of Ohio in the cause and matter hereinafter stated. Said action was commenced on the 21st day of December, 1934 and proceeded to final disposition on the 17th day of November, 1941 and during the progress thereof pleadings and papers were filed, process was issued and returned and orders of the court were made and entered in the order and on the dates heretofore stated, to-wit:

Present: The Honorable Paul Jones
United States District Judge

Designation of Contents of Record on Appeal.

(Filed January 9, 1942)

To George A. Kubler:

The appellant, Thad Benson Carter, designates the following portions of the record and proceedings to be contained in the record on appeal of the above entitled cause.

The clerk will please prepare a certified typewritten transcript of the record in duplicate. In conformity with Rule 75(e) of the Rules of Civil Procedure, and with the Rules of the Appellate Court which adopt said Rule 75(e), and with Rules 10(2) and 38(8) of the Supreme Court the Clerk will please avoid all duplications of matter, making proper cross references, and omit all captions of documents, all proofs of service and verifications, substituting brief references thereto.

1. Title page.

2. Caption.

3. All docket entries on the clerk's bankruptcy docket.

4. Order directing reappraisal filed March 21, 1941.

5. Order of reappraisal and fixing time to redeem farm, filed August 6, 1941.

6. The Condensed Statement in Narrative Form of Testimony Adduced at Hearings on April 24, 1941, May 1, 1941, and May 12, 1941, which accompanies this designation. Note: One complete transcript of the evidence submitted at the hearing on said reappraisement has been filed with the clerk and one complete copy thereof has been delivered to counsel for said appellee.

7. Debtor's Exhibit 1.

8. Petition for Review of Order of August 6, 1941, filed August 13, 1941. (Note: This is attached to Certificate of

Harry F. Wood on Petition for Review. It should not be included twice.)

9. Certificate of Harry F. Wood on Petition for Review, filed September 25, 1941.

10. Letter of Elmer McClain to Clerk, District Court, dated November 10, 1941, and filed November 11, 1941.

11. Letter of Clerk, District Court, to Elmer McClain, dated November 12, 1941, and filed November 12, 1941, replying to letter of Elmer McClain dated November 10, 1941, and advising as to admission of Harry F. Wood to Bar of District Court.

12. Memorandum of Opinion on Review, filed November 7, 1941.

13. Order on Petition for Review filed November 17, 1941.

14. Application for Rehearing filed December 8, 1941.

15. Order denying application for rehearing, filed December 9, 1941.

16. Notice of Appeal, filed December 15, 1941.

17. Omit appeal bond and insert this statement: "Bond for costs on appeal in the sum of $250 filed December 17, 1941.

18. Stipulation of Counsel.

19. Designation of contents of record on appeal.

20. Concise Statements of Points attached to designation.

21. Certificate of Clerk.

Elmer McClain and Leon N. Stone,
Lima, Ohio, Attorneys for Appellant.

The Concise Statement of Points and the Condensed Statement in Narrative Form referred to in the foregoing Designation follows:

In the Matter of
Thad Benson Carter,
Bankrupt. } No. 33696 Bankruptcy

Docket Entries.

12/21/34 Petition for composition or extension of time under Section 75, Chapter VIII of the Bankruptcy Act and Schedules filed in triplicate at 11:30 A. M.

" Order approving petition as properly filed under Section 75 filed & ent., Jones, J.

" Order referring petition to Harry Wood, Conciliation Commissioner, filed & ent., Jones, J. True copy of order of reference with copy of petition and schedules to Conciliation Commissioner.

1/23/35 Amendment to Schedule A-3 by leave of Commissioner filed.

5/13/35 Certificate of Commissioner of failure of Debtor to obtain acceptance filed.

5/14/35 Amended petition under Subsec. (s) of Sec. 75 and schedules filed in triplicate at 2:25 P.M.

" Order of adjudication and reference filed & ent. (Jones, J.)

" True copy of order with copy amended petition and schedules to Referee.

" True copy of order to Conciliation Commissioner.

5/22/35 Record of Conciliation Commissioner filed. To Referee.

6/6/35 Order dismissing petition under Sec. 75 (s) filed & ent., (Jones, J.) Copy of order to counsel for Debtor. Copy of order to Referee.

7/2/35 Record of Referee and other papers filed.

" Report for Statistics filed.

1/8/36 Petition of Bankrupt to reinstate case filed.

" Order vacating entry of dismissal and reinstating case and referring case to Harry F. Wood, acting as Referee, filed & ent. (Jones, J.) True copy of order with Referee's and Commissioner's papers to Harry F. Wood.

4/30/36 Amendment to schedule A-3 by leave of Referee filed.

8/7/36 Petition of Union Joint Stock Land Bank to Review order of Commissioner filed.

" Certificate of Commissioner on Review filed. Counsel notified.

9/10/36 Order sustaining petition for Review and dismissing Debtors petition (Jones, J.) Counsel and Referee notified.

10/9/36 Motion of Debtor for re-hearing on Review filed.

10/9/36 Order dismissing proceedings of Debtor so far as it pertains to 112 acre farm, etc. filed (Jones, J.) True copy to Referee.

10/10/36 Petition of Debtor for appeal filed.

10/10/36 Assignments of error filed.

10/10/36 Order allowing appeal and fixing bond in the amt. of $250.00 filed. (Jones, J.)

10/10/36 Citation issued. Ret. 11/9/36.

10/15/36 Bond on appeal approved & filed (Jones, J.) (New Amsterdam Casualty Co.)

11/2/36 Citation ret. & filed. Service acknowledged.

11/7/36 Praecipe for transcript filed.

11/7/36 Motion for extension of time to file transcript in U.S.C.C.A. filed.

" Order extending time for filing transcript of record in U.S.C.C.A. to 12/9/36 filed (J).

12/8/36 Application for extension of time for filing transcript in U.S.C.C.A. filed.

" Order extending time for filing transcript in U.S.C.C.A. to 12/20/36 filed (Jones, J.)

12/18/36 Order extending time for filing transcript in U.S.C.C.A. to 12/27/36 filed (J.)

12/19/36 Certified transcript of record mailed U.S.C.C.A.

Folios 74— 4.20

Certificate .50

4/2/37 Recommendation of Commissioner and order dismissing petition as to The City Loan & Guaranty Co. filed. (J.) Commissioner and counsel notified.

4/14/37 Cert. copy of order of U.S.C.C.A. dismissing appeal filed.

4/16/37 Motion of Debtor for temporary restraining and for order vacating rulings of court of 9/10/36 and 4/2/37 and brief filed.

4/16/37 Temporary restraining order on Common Pleas Court of Summit County filed. True copy of order to atty for Debtor for delivery to Common Pleas Court. True copy of order to Commissioner.

4/29/37 Proof of service of motion filed.

4/30/37 Reply to Motion filed.

5/18/37 Stipulation & order granting leave to file brief filed. (W.)

5/18/37 Brief of City Loan & Guaranty Co. in opposition to motion to vacate filed.

9/22/37 Order vacating restraining order and overruling motion of Debtor to vacate rulings of Court of 9-10-36 and 4-2-37 filed, J.

8/7/40 Petition for Review with motion to dismiss filed.
" Order referring petition for review, etc., to Harry F. Wood, filed. Jones, J.
8/7/40 Copy of petition for review, etc. with true copy of order of reference to Harry F. Wood.
11/29/40 Report of Conciliation Commissioner on petition for review filed. Counsel notified.
" Transcript of testimony before Commissioner filed.
12/9/40 Objections & exceptions to recommendations of Commissioner filed. Copy direct 12/9/40.
1/8/41 Motion of Debtor to amend objections to report of Commissioner & brief filed. Copy mailed 1/8/41.
3/21/41 Order referring Review and objections to Report of Commissioner to Commissioner and directing him to have a re-appraisement made, filed. (Jones, J.) Copies to counsel—true copy to Commissioner.
8/6/41 Order of Conciliation Commissioner fixing time to redeem farm, with transcript of hearing and briefs, filed.
8/13/41 Application of Debtor for extension to file petition for Review, filed. To Commissioner.
8/15/41 Application of Debtor for extension of time to file brief in support of Review, filed. To Commissioner.
9/25/41 Certificate of Commissioner on Review, filed. Counsel notified.
10/1/41 Application for extension of time to file brief on Review allowed. (Wilkin, J.) Counsel notified.
10/11/41 Brief on behalf of Debtor filed. Copies direct.
10/15/41 Reply brief on behalf of secured creditors, filed. Copies direct.
10/20/41 Reply brief of Debtor, filed. Copies direct.

11/7/41 Memo. of opinion on Review, filed. (Jones, J.) Copies to counsel & Commissioner.

11/17/41 Order determining fair value of property and fixing Dec. 15, 1941 in which to redeem said property, filed. Copies to counsel and Referee.

12/8/41 Motion of Debtor for re-hearing on order of Review and affidavits in support, filed. Copies direct.

12/9/41 Application of Debtor for re-hearing, denied. (Jones, J.) Counsel & Commissioner notified.

12/15/41 Notice of appeal of Debtor, filed. Copies mailed to T. W. Kimber and Dwite H. Schaeffer 12/15/41.

12/17/41 Bond on appeal filed. (Joseph A. Burns & Lena D. Carter.)

1/9/42 Designation of contents of record on appeal and statement on which appellant intends to rely, filed.

1/9/42 Condensed statement in narrative form of testimony, filed.

1/9/42 Stipulation re certification of record, filed.

Order.

(Filed March 21, 1941)

The Court having before it for consideration the petition for review and motion of the Debtor for leave to file an amendment to objections and exceptions to the report of the Conciliation Commissioner finds that the decision of the Supreme Court in the case of Wright *v.* Union Central Life Insurance Company should be followed.

It Is Therefore Ordered that this matter be referred to the conciliation Commissioner who is directed to have a re-appraisement of the farm made and that the secured creditor be afforded an opportunity to present evidence as to the present fair value of such farm and that the Conciliation Commissioner determine the correct appraised

value and fix a reasonable time within which the Debtor shall redeem the farm from the mortgage lien, failing in which a public sale is ordered.

(sgd) Jones
United States District Judge

March 21, 1941

Re-Appraisal
Time Fixed to Redeem.

(Filed August 6, 1941)

To the Honorable Paul Jones, Frank Kloeb, and Robert N. Wilkin, Judges of Said District Court.

I Harry Wood, Conciliation Commissioner to whom the above matter was referred to do hereby submit the following:

I conducted several hearings in which the Debtor Thad Benson Carter was present and was represented with counsel. Their witnesses were examined and cross-examined by Mr. Kimber, of Akron, attorney for the secured creditors.

The secured creditors were represented by Mr. Kimber who was present at the several hearings, and had the same number of witnesses as the defendant. These witnesses were examined and cross-examined by Mr. McClain attorney for the debtor.

After hearing the testimony given by the several witnesses, and studying the briefs furnished by the defendant and the plaintiff, and upon a personal investigation by the Conciliation Commissioner of the value of said farm, I hereby fix the value of said farm at $150.00 per acre.

It Is Hereby Ordered that the debtor Thad Benson Carter be given until October 15, 1941 to redeem the farm from the mortgage lien.

It Is Hereby Ordered that the debtor Thad Benson Carter shall not do any planting of any description until after October 15, 1941.

Respectfully submitted,
Harry F. Wood,
Conciliation Commissioner.

Condensed Statement in Narrative Form of Testimony Adduced at Hearings on April 24, 1941, May 1, 1941 and May 12, 1941

(Filed January 9, 1942)

Direct Examination by Creditor

WALTER H. CHAMBERLAIN

Until September 1940 lived on a farm in Summit County, then moved to Macedonia, Summit County, Ohio. Is 59 years of age, and has been a farmer all his life. Still owns the farm but has his son operate it. Lives about a mile and a half from the Carter farm. Has been acquainted with Carter and his farm almost all of his life.

Was a director in the Northfield Bank in Macedonia from the time it was organized about 26 years ago up until a year ago. Has been a director of the Twinsburg Bank for thirty years, and still is. Acted as an appraiser for the Twinsburg Bank since connected with same. Was on the Appraising and Finance Committee of the Northfield Bank for an unstated time. The two banks are community banks serving the people living in the surrounding territory.

Carter's farm is bounded on the east by a slag road running north and south, formerly called the Town Line Road, and now called the Sheppard Road; on the north by the Ledge Road, which is a water bound asphalt road, hav-

ing slightly over a half mile frontage on each of these roads. It is approximately half way between Cleveland and Akron, being about 18 miles from each city. It has a timber tract. The present fair value is about $200 per acre.

On cross examination witness stated that he was a member of the council for the village of Macedonia when it rented a room in a building partly owned by him, and there was some objection thereto, but denied knowing that Carter was one of the objectors.

D. A. SCANLON

Resides in Akron, Ohio, having lived in and about Akron and Summit County for about 37 years. Is 67 years of age. Off and on for the past 8 years has been an appraiser for the Probate Court of Summit County, not appraising regularly for them, but just certain properties. Is now one of the official appraisers for the Sheriff of Summit County. Has acted as appraiser for the sheriff for the past four years and also for about one year about 8 years ago.

Has been president of the North Hill Savings & Loan Company located in Akron for the past ten years and is also a director at the present. Once a year goes out on the appraisal of all the properties secured by loans at the loan company for the purpose of making a report to the state. Has done this for the past five years.

In connection with Probate Court and Sheriff's office has appraised quite a few farms throughout the county. Has appraised farm lands in Macedonia and Northfield Townships in the past year. At request of attorney for the mortgagee creditor went on Carter's farm. It has a frontage on the east of about a half mile, and about a half mile on the Ledge Road. The present fair value is around $200 an acre.

On cross examination stated that he has never farmed, nor owned a farm, but about 67 years ago he lived on a small farm of about 50 acres in the State of Maine.

RUSSELL OSBORNE

Has lived in and about Macedonia since 1909. Is 49 years of age. Has resided for 23 years on his own farm, which is about a mile and a half south of Macedonia, on R. 631 and about 2½ miles south of Carter's farm. Has known Carter's farm for about 30 years. Carter's farm is bounded on the east by the Sheppard Road and on the north by the Ledge Road, being fairly level with said roads; and is approximately half way between Cleveland and Akron, being about 18 miles from each. The Ledge Road is just a cross road from the Sheppard Road which runs into Routes 14 and 82, which are main highways. Carter's farm is about a mile from Route 82 and about 2 miles from Route 14. The present fair value is from $190 to $200 per acre.

Direct Examination by Debtor.

JOHN T. HOWARD

Resides in Cleveland, Ohio. Is City Planner, being connected with Regional Association of Cleveland. Is a graduate of Yale University and the Massachusetts Institute of Technology; was on the staff of the New England Planning Commission, and was on travels throughout the various regions of that field; was in the American Institute of Planners; has lectured to various educational institutions; is now devoting his time exclusively to the study of the land use and the planning of the living quarters buildings and housing and tracts of land in the general vicinity of Cuyahoga County.

In his present professional capacity has had charge of some of the work and studies of the land out in the Metropolitan District of Cleveland, Ohio. This study took about

one and one-half years, with some thirty or forty individuals being engaged in making a survey of the land in that region. Is the author of Publication No. 91 of the Regional Association of Cleveland, dated November 19, 1940, which contains the results of this survey, which from personal study and observation he knows to be correct.

The survey found that from sixty to sixty-five per cent of the land in Cuyahoga County is farms, woods, or is entirely vacant and not used for urban or city purposes. Even in the City of Cleveland itself, the proportion of unused land is twenty-five per cent. There are approximately 28,000 acres of vacant sub-divided land in Cuyahoga County, which if built up in residences would accompodate about a half million people. There is in addition over 40,000 acres of vacant unsubdivided land and over 80,000 acres of farm land in Cuyahoga County, all available for residential purposes. Bedford Township, Cuyahoga County, has a much larger proportion of vacant land than other parts of the county. In 1939 there were 160,000 lots with delinquent taxes in Cuyahoga County. Carter's farm is outside of the Metropolitan area of Cleveland and outside of Cuyahoga County, being just over the county line.

According to the census the population of Cuyahoga County in 1940 was 1,246,000. During the past ten years the population has increased approximately 15,000 people. He has made a study of the population trends of the Cleveland community, and says that the future trend is for an increase of more than one and five-tenths per cent, but the growth will not be as high as in previous decades. This opinion is based on a study of the birth and death rate and the immigration trends not only in the greater Cleveland area but also in other parts of the state, and throughout the entire country. In the past decade, immigration has been less than in previous years.

On cross examination stated that he is 30 years of age and has never lived on a farm or in Summit County.

GEORGE ADAMS.

Has resided in Twinsburg and vicinity entire life. Is 67 years of age. Owns 404 acres and a half interest in 118 acres, said land being in the northeast section. Carter's farm is northwest of Twinsburg. Has been on Carter's farm to get peaches in the front, and has looked over the rest of the farm since then. Is familiar with the buildings. Has never been in the house, except the cellar. The outside condition is run down some. It is not painted. There is a building which is used as a barn which might be O. K. for cattle, but not for storing crops. The fences are just ordinary.

Has had land to sell, which is similar to Carter's land. Has had the price on it at between $40 and $50 per acre, and although has had people inquiring about it, has been unable to sell it because the buildings are not modern. The value of Carter's farm is about $50 per acre.

Cross Examination.

He now lives in Twinsburg proper, having lived there for seven years, but has continued to operate his farm just the same most of the time. His farm is on the Liberty Road, one mile east and one mile north of Twinsburg. Has owned it for over 40 years.

There have been some spring runs on the back end of the Carter farm. Heard many years ago that it is one of the highest points in Summit County. There is a nice orchard which has borne a few pretty good crops.

The Jones farm is near the village of Macedonia and about a mile and a half from Carter's farm. Does not know what it sold for, but supposes that Jooks had something to do with the sale price. Knows where the Eugene Peck farm is, but does not know that it was sold. Knows where

Allen Farm of about 230 acres is, it being about a mile and one half from Twinsburg in the opposite direction from his own farm, but does not know what it is being offered for sale for. Does not know of a recent sale of the Walter Beney Farm, nor where the Oviatt land is; nor the price of it. In the last 2 or 3 years, the Stony Ridge Farm owned by George Bowman, which farm is in the vicinity of Macedonia and Twinsburg, and has about 150 acres was sold for $12,000. The buildings on this farm sold it.

Redirect Examination.

The Bowman farm was sold to Plechaty who had lived there 10 years. When asked as to the character of the buildings on the Bowman farm he said "God! They have a fancy barn there. You see gables in the construction of the barn and the house." The buildings alone would have brought the price of $12,000 for which the land and buildings were sold. The land was free. The Carter farm is in one block. The Bowman farm has a highway, ledges and railroad running through it. The road which runs past the Carter farm is macadam. The Bowman farm is right on an up-to-date brick pavement where it is handy. This Bowman farm has a dairy barn which will hold around 50 head of cattle, besides horses and has spring water running right at the barn. The only spring water on Carter's farm is clear at the back of the farm. The Jones farm is on Route 82 a concrete highway.

ALVA EAGLE

Lives on a farm near Wooster, Ohio. Is a farmer owning 2 farms, operating one entirely by himself, and the other on a 50-50 share basis. Is Vice Chairman in charge of county affairs for the government under the Agricultural Adjustment Act (commonly known as Triple A), having been with them for almost 4 years, or several years previous to becoming associated with the AAA, was manager of

a farm cooperative. Since his association with the AAA he has done a good deal of appraising of farm lands throughout the state of Ohio, including Northern Ohio, Northeastern Ohio, Cuyahoga and Summit Counties, and in the general vicinity of the Carter farm. At the request of Carter he examined Carter's farm this morning for the first time, looking around the buildings a little, going over the farm through the woods and up through the open pasture, by the north fields across and in the peach orchard, going through every field. Took samples of the soil and examined it. This is a part of his regular duties in appraising farms, having made himself familiar with the nature of farm soils and their relation to the value of the farm. He liked the soil very much in the first field right below the buildings, it being a loose light brown top soil, and a yellow brown subsoil, which together are called a chestnut loam. Then he went up through the timber and came around to the north side of the farm and he was very much disappointed in the soil there, finding a light top soil with a very heavy subsoil, or a mottled gray soil. This does not make a very efficient soil for top. The west end of the farm is stony and underlaid with rock. The fences are the old type rail fence, fairly good. There is about 4 acres of peach orchard, some of which is frozen out and not any too thrifty, and some of the trees are dead. Estimates about a third of the trees are no longer efficient. The house is in fair condition, but the rest of the buildings have no value. The outside of the house needs painting badly, and the shingles on the roof have curled up and will soon break and be gone.

He determined the value of the farm as follows: 22 acres at $50 per acre; 10 acres at $35 per acre, this 10 acres lying in the northeast corner of the farm; 10 acres on the north side along the road at $40 per acre; 17 acres which is wheat field in the rear of the farm at $40 per acre; the 4 acre peach orchard at $60 per acre; the 20 acres of open pasture at $35 per acre; and the balance of 85 acres at $25 per acre.

Cross Examination.

The farm on which he resides is 10 miles west of Wooster; the nearest village is Funk, a mile north of his farm. Has lived on his farm of 88 acres since he purchased it in 1913.

Carter went over part of the farm with him while he was examining it today. Saw where the trough for water came out and it looked as if there was a spring there, but there was very little water.

Has never lived in northern Summit County, Macedonia or Twinsburg. In 1935 appraised the Bowman farm and Quayle farm, both of which are near Macedonia and Twinsburg. This appraisal was made when he was working for the Federal Land Bank, and an application had been made by the owners of these farms for loans. Does not know the asked prices for farms in Macedonia and Twinsburg Townships nor is he acquainted with sales that have been made in the last two or three years in this vicinity. Does not personally know that Carter's farm is about 18 miles from Cleveland, nor that a number of farms north of Carter's farm and in that vicinity have been purchased by Cleveland people. From what people have told him, knows that the prices of lands in the vicinity of the Carter farm were much higher ten or fifteen years ago.

JOSEPH A. HUBER

Is in the real estate business at 1306 Center Road, Cleveland Heights, Ohio, which is approximately 14 miles from Carter's farm. Has been dealing in farms for a little over thirty years. Has sold or had for sale farms in the community in which the Carter farm is located, and all around that community, having sold hundreds of farms since he has been in business. At Carter's request he personally examined his farm which is about 18 or 19 miles from the center of Cleveland and just a little farther from the center of Akron. It is not on a main road but on a secondary

road. It has a loose gravel road in front of it, which throws up a lot of dust when driven on. The fences are fair, the buildings are almost worthless, the farm buildings in their present condition not being adequate for farming. Went over the farm going as far as was necessary to see the line, the general type of land, and the different sections of the farm. It is slightly rolling, with what he judged and verified by Carter to be 55 acres under cultivation, approximately 40 acres of mixed timber, about 5 acres of orchard of which from 25 per cent to one-third is dead, about 68 acres of pasture, part of which is very good, and a great deal of it very poor, having briars and brush on it. It has a fairly good location, but its scenic view is "blank". The woods are not very much in view, and the buildings are very poor. The value of Carter's farm is a little under $72 per acre, or about $12,040 for the total. In determining the value, did not consider it merely as a farm, but gave it some credit for being close to town, and for some other business than just ordinary farming. Valued the tillable land of 55 acres at $100; figured there was about $1200 or $1500 at the most for the timber. However, if the timber was cut off, the land would not be worth very much. Figured the timber land at $50 per acre; the 5 acre peach orchard which is good for a few years if taken care of at $200 per acre; the 68 acres of pasture land which with the exception of one field has very little possibility of ever being reclaimed because of the flat surface and being rocky at $30 per acre, the house at $1200 and the barn at $300. The balance of the outbuildings are valueless.

Has knowledge of the prices for which farms in the vicinity of Carter's farm have sold. These prices have varied with the localities, the kind of buildings, the type of soil, the amount of tillable ground. Has sold a number of farms out through Peninsula and Twinsburg, and has had contact with the sale of a great many more. Within the last five years has sold half a dozen or more farms around

Northfield and Peninsula. One farm was sold to Mr. Wigmore of The Otis Steel Company. This was in Oak Hill in Peninsula, having 100 acres, and poor buildings, and it brought $6000. A farm right next to this one, known as the Old Stein Farm, having 144 acres was sold to Mr. Robinson for $9500. Three hundred acres in Kendall Park was sold for $40 per acre with fairly good farm buildings, it being real high scenic property. In the vicinity of Twinsburg and Macedonia, right back of Crown Hill Cemetery 12 acres with fine buildings and not really being a farm, was sold for $8500.

Had the Bowman farm for sale after the Cleveland Trust took it away from Bowman. It had about 98 acres and he sold it to Plechaty for $12,000. It had excellent buildings, the barn "being one that nobody would want to build". The house has three baths, vapor heat, and is in very good condition. It also had spring water running by gravity right into the barn and house, and in the orchard on out to the creek.

Sold the Wise farm for $6500 after showing it 20 times. This farm was just opposite the back end of Carter's farm and joining Carter's farm on the west. It had a great big brick barn, and a 5 room house which was in a livable condition. The Walter Beany farm sold for scenic value. The reason that the farms which he mentioned are not selling at a value higher than the value he put on Carter's farm is their location and not having good buildings.

Cross Examination.

Sometime ago he had some conferences and correspondence with Mr. Kimber, the attorney for the mortgagee creditor relative to Carter's farm, but after getting Mr. Kimber's price on it, he did nothing further. Believes at that time Carter was appraising his farm at $250 per acre. In correspondence between himself and Mr. Kimber's firm, it was stated that Carter had formerly ap-

praised the farm at $400 per acre. This valuation was made in "the good old days", probably before 1930. Looked over the Carter farm when corresponding with Mr. Kimber's firm relative to sale of it. Does not remember the valuation put on it at that time. Knows the general location of the Jones farm, but knows nothing about it. Knows the Walter Beany farm which is some distance south of the Carter farm. It has an old fashioned white house and an old barn.

The value of the standing timber on the Carter farm is about $1500. It is not very heavy and is second growth, being white oak, some red oak, some maple and beach, and some scattering of walnut, which will average second growth.

The farm does and does not have potential value for acreage tracts or small tracts on these 2 highways. In valuing the farm took into consideration the possibility of acreage tracts or small tracts for building purposes. The sad thing about Twinsburg is that it is ruined by "Shanty Town". Small tracts can be sold, but not for any value. The tracts of land some little distance north of Carter's farm on the highway leading from Cleveland have been sold in small tracts, but these are what he referred to as "Shanty Town". Calls it "Shanty Town" because there are no restrictions there, and no rhyme or rhythm of lay-out. This failing could be cured to some extent if the Carter's farm was being sold in small tracts, but "that black eye Twinsburg" still could not be cured: There are negroes living in Twinsburg, which decreases the value thereof, and is one of the black eyes. Some of the colored people settlements in the vicinity of Carter's farm are as follows: (1) Near Bedford on Route 14; (2) Between Lang Road by the cemetery, and the next road north, it is nearly all colored for about a mile. Both of these settlements are about 4 or 5 miles from Carter's farm.

The sale and purchase of farms has been inactive, but there has been some improvement in the desire for farms.

LEONARD PLECHARTY

Is a farmer, having been one for 14 years. Before he left the city he was connected with the Cleveland Home Investment Company and dealt in farm and city real estate in Cuyahoga County, Summit County, and others. Has had experience in dealing in farms in the vicinity of the Carter farm. Was in the market for a farm last fall, and made inquiries about farms and the prices asked. Has lived on the Bowman farm for over 8 years, Mr. Bowman being in the glass-ware and china business in Cleveland. Last fall looked at the Blackburn farm on route 303, having 140 acres. The owner first wanted $6700 but then offered it for $6000. It had two houses and a good barn, and very good land. Also looked at the Van Sweringen farm on Liberty Street. It had approximately 240 acres and a barn and house in fair condition; the land being in fair enough condition to farm, but it was not the best. The owners first wanted $9,000, but were willing to accept $8,000. Also looked at another farm on Liberty Street with 106 acres of ideal land which lay nice, but with no buildings. This belonged to Bert Decker and Adams, and they asked $4200 for it. After looking at all these other places he purchased the Bowman farm. The Carter farm is on a loose gravel road, the buildings are not in too good condition; the house is a nice respectable place, the other buildings are not adequate for farming and he could not farm with the buildings that are there. The value of the Carter farm for farming is $6500 and for other purposes might be $8500. There is other acreage for sale in the vicinity of the Carter farm.

Cross Examination.

The Van Sweringen farm is in back of witnesses farm [the Bowman farm] and four or five miles from the Carter farm.

Did not talk with Mr. Carter about the value he was going to place on the Carter farm. Did not go over the Carter farm but has been there on several occasions. Never went over the timber tract. The Ledge Road on which it fronts has small and large ruts in it. The Sheppard Road is not an improved road in his opinion, being very difficult to travel on last winter.

GILBERT L. HUDDILSTON

Direct Examination by Creditor.

Is 48 years of age. Was born, raised, and still lives in Northfield, Ohio, which is about 2½ miles from Macedonia. Has been a farmer and stock buyer and dealer. Owns a 82 acre farm in Northfield, which he operates; a one-third interest in another farm of 96 acres, and a one-third interest in a piece of property in Solon. Two of these properties are in Summit County. Three years ago he sold for $14,000 the old home place of 33.83 acres in Sagamore Hills, which was originally a part of Northfield Township. Would like to sell his present farm of 82 acres, having a house and small barn for $200 per acre. It is very productive land lying between Brandywine Road and Route 8, which is one of the main thoroughfares from Cleveland to Akron. Knows the location of the Jones farm, that it was recently sold, and that the present owner is conducting a dairy farm.

Knows that some farms in and about Macedonia and Northfield have changed hands once in a while, but does not know what the asking price or selling price has been.

Has known the Carter farm since he was a child and at different times he has been on and over the farm. It is between Cleveland and Akron, being about 16 or 18 miles from each city. Up until 2 or 3 years ago it was used as a dairy farm, a large number of cattle being kept. The farm has an approximate frontage of ½ mile on the Town Line Road and the Ledge Road, the latter being a macadam type road. These roads are improved highways. There are springs and spring water on the back of the farm and the last time he was there it had quite a lot of timber, there being some beautiful white oak trees there. The crops raised on the Carter farm during the past 12 or 15 years seemed very good. Has seen oats, potatoes, corn, soy beans, wheat crops on the Carter farm. Knows there is a peach orchard there. It has a high elevation. When everything else is killed it is still green there. It should bring $175 per acre, and that is a fair value of it. Would offer $150 per acre himself and expect to make some profit on it. Believes there is sufficient timber to rebuild a barn suitable for dairy purposes. It could be made a substantial dairy farm as well as a farm for raising of crops.

Cross Examination.

The 33 acre farm which he sold for $420 per acre is on Sagamore Hill, which is incorporated. This farm is a place of scenic beauty, and some rich Cleveland people buy homes in Sagamore Hill which has some rich places there. His farm sold for a rich person's home, and not for farming purposes, none of the land in that section selling for farm purposes. After selling it, he leased it from the purchaser for $15 per month, the owner reserving the orchard of approximately 3 acres and the door yard. It is about 1½ miles from Cuyahoga Valley, and has scenic beauty way around it.

The springs on the Carter farm are at the opposite corner of the land, being the farthest point from the house. Has not been on the Carter farm for 5 years.

The 82 acres which he owns is southeast of Bedford, which is about 5 miles from Warrensville Heights; southwest of Glenwillow; east of Sagamore Hills, and the way the crow flies about 3½ miles from the Carter farm.

H. A. COCHRAN

Full name is Harry Adolphus Cochran. Has lived in and around Macedonia and Northfield in Summit County for about 56 years. Has been a farmer all of his life, and now lives on a 89 acre farm in Macedonia, Ohio. Also owns several other farms, to-wit: 47 acres which lie southeast of his home farm; 160 acres a mile south of Macedonia; 30 acres which is a fruit farm with about 500 fruit trees, being on the Hudson Road, about a half-mile south of Macedonia; a farm on the Ledge Road; 140 acres; 36 acres; and one other. Formerly owned a farm in Geneva, and a grape farm in Harpers and several other little tracts. The farm on the Ledge Road is directly across the road from the Carter farm, part of it being directly across from the Carter farm, and part of it northwest of the Carter farm. Purchased it in November 1940. It has a house and double garage, being about 52 acres. The Carter farm abuts about ½ mile on the Town Line and Ledge Roads, the latter formerly being known as the Twinsburg Road and now also called the Richfield Road. Has for many years been acquainted with real estate and farm values in the vicinity of Macedonia and Northfield. In the past few years the following lands in this section have changed hands: 1. The Jones farm—he having sold part of the farm—16 or 18 acres to the father of Clarence Jones. It now has 100 acres, and was recently sold by the Cleveland Trust Company for $16,000. (2) Mr. Huddilston's farm of 12 or 13 acres, being an old sand bank and swamp was sold for $275 per acre. (3) The Ben Myers farm which lies on Route 8 in the Township of Macedonia, having approximately 25 acres was sold at he thinks between four

and five hundred dollars an acre. (4) Part of the Graham farm on Route 8.

Has known the Carter farm for 45 or 50 years, knowing it while Mr. Carter's father was alive and owned it. His eyesight has been failing in the past year but if somebody takes his arm, he can see the light but he cannot walk around. He can walk around his home. Has not had reasonably good eyesight for two years. Has not driven for two years. Before that he had good eyesight.

Was all through the timber on the Carter farm about three years ago looking for calves. Thad Carter once tried to chase him out, threatening him with a shot gun. Mr. Carter at this point interjected with the statement "That is a lie." Mr. Cochran then said "Well, I will take that back." A couple of years when he went through the timber, it was a fine piece of timber, oak, whitewood, cucumber, basswood, walnut, nice bunch of maples, some beach, and quite a lot of second growth, having kind of got thick with second growth. There are springs on the west end of the farm which he guessed had never been known to dry up. They are accessible to cattle, having been there for a number of years. Had the pasture on the west end of the farm about 4 or 5 years ago when everything else went dry, and the water was still running there. Has gone to the springs on the Carter farm, and knows other people have gone there when other places were dry. During the past 10 or 15 years the Carter farm has been farmed, potatoes and corn, wheat, and oats being raised there, along with the peach orchard. All kinds of grain can be raised there. The crops raised by Carter on his farm were just a little bit better than those raised by anyone else. It did not seem to matter whether Carter planted his potatoes late or early, he always had a good crop, and the frost would not kill them. The farm is a beauty spot. Does not think that there is a better laying farm between Akron and Pittsburgh. It is

way up high, and has a wonderful scenic location. As long as he can remember it always had a big dairy on it having from 50 to 75 head of cattle. Does not know whether Carter has been dairiyng very much in the last couple of years. Several years ago Carter also had a nice flock of sheep there, and his father used to have 8 or 10 horses, but Carter uses a tractor. The peaches were of the finest quality, Carter saying there was not a more perfect peach raised in the State of Ohio. Carter had a sample peach at the home-coming in Macedonia, and there was not anything else there to equal it. As to his sight, it is like he tells the women. When he gets them up close so he can kiss them, he can tell who they are. About a year and a half ago the house was in fair condition and livable. A coat of paint and a little spouting on it would not hurt it. The top of one of the barns was blowed down, and the other, a horse barn, fell down. There is sufficient timber on the farm to repair the barns and the house, and put everything in good shape. The amount of timber necessary would hardly be missed, but would make the timber thrive a little better.

Carter sold 4 or 5 acres of sod off of the farm for around $200 per acre about 3 or 4 years ago. The fair and reasonable value of the farm is $225 per acre. If he could buy it at $175 per acre he would make an offer in that amount on a cash basis, with the expectation of making a little profit on it if he got tired farming it.

Cross Examination.

He has been present at all three of the present hearings in this matter. Is not entirely blind. Came to the first and second hearings with Mr. Huddilston who led him around because he did not want to fall over anyone. Holds second mortgage of over $2000 on the Carter farm. Could have found his way around and came up the steps alone.

At this point at the request of counsel for the debtor, the conciliation commissioner stated that the former ap-

praisement of Carter's farm in these proceedings was $5800.

The spring witness mentioned is at the southwest corner of the farm. Does not think that the spring at the northwest corner is on the Carter tract. The flats are on the southeast corner. The springs are clear at the west end of the farm. Thinks the Terminal Tower in Cleveland can be seen from the Carter farm. Has heard that George T. Bishop's place is the highest point in Summit County. Knows that the United States Geodetic Survey shows the Carter farm to be about ¼ mile north of the city limits of West Richfield on Route 82. Did not know that the County Engineer's office officially shows the highest elevation to be at the center of Route 82, and being 1320 feet. Did not know, or if he did, has forgotten that the United States survey shows the elevation of the Carter farm to be 220 feet below the highest elevation of 1320 feet shown by the County Engineer's office.

Does not know of the Pasderski farm, the Harry Gill farm, the Sacha farm, or the Stipek farm.

T. W. KIMBER, ATTORNEY FOR GEORGE A. KUBLER, SECURED MORTGAGE CREDITOR

Mr. Kimber stated for the record that the present indebtedness due to the secured creditor, George A. Kubler, as of July 1, 1941, amounts to $34,702.53.

Amherst
Elyria
Oberlin
Lagrange
Wellington
Spencer
Medina
Lodi
Burbank
W. Salem
Polk
Congress
Creston
Rittman
Seville
Wadsworth
Doylestown
Clinton
Canal Fulton
N. Canton
Smithville
Orrville
Jeromesville
Wooster
Dalton
Massillon
Canton
Apple
Lake Erie
Valley City
Brunswick
Strongsville
Peninsula
Akron
Cuyahoga Falls
Barberton
Norton
Green
Hartville
Louisville
Alliance
Leroy
Sterling
Creston
Ashland
Mansfield
Loudonville
Millersburg
Fredericksburg
Sugarcreek
Dover
New Philadelphia
Uhrichsville
Cleveland
Akron
Canton
Youngstown
Pittsburgh
Columbus
Toledo
Cincinnati
Dayton
Zanesville
Cambridge
Steubenville
Wheeling
Parkersburg
Charleston
Huntington
Ashland
Lexington
Frankfort
Louisville
Evansville
Indianapolis
Terre Haute
Vincennes
Chicago
Gary
Fort Wayne
South Bend
Detroit
Flint
Saginaw
Bay City
Grand Rapids
Kalamazoo
Battle Creek
Lansing
Jackson
Ann Arbor
Toledo
Erie
Buffalo
Rochester
Syracuse
Utica
Albany
Binghamton
Scranton
Wilkes-Barre
Allentown
Bethlehem
Easton
Reading
Harrisburg
Lancaster
York
Gettysburg
Hagerstown
Frederick
Baltimore
Washington
Annapolis
Wilmington
Dover
Philadelphia
Camden
Trenton
Princeton
New Brunswick
Newark
Jersey City
Elizabeth
Paterson
Hackensack
Morristown
Dover
Phillipsburg
Belvidere
Flemington
Somerville
Bridgewater
Perth Amboy
Asbury Park
Long Branch
Freehold
Toms River
Lakewood
Atlantic City
Cape May
Vineland
Millville
Bridgeton
Salem
Woodbury
Camden
Moorestown
Mount Holly
Burlington
Bordentown
Hightstown
Princeton
New Brunswick
Plainfield
Elizabeth
Newark
Jersey City
Hoboken
Weehawken
Union City
West New York
Guttenberg
North Bergen
Secaucus
Kearny
Harrison
East Orange
Orange
Montclair
Bloomfield
Nutley
Clifton
Passaic
Paterson
Wayne
Pompton Lakes
Ringwood
Oakland
Mahwah
Ramsey
Upper Saddle River
Saddle River
Ridgewood
Glen Rock
Hawthorne
Wyckoff
Franklin Lakes
Midland Park
Waldwick
Allendale
Ho-Ho-Kus
Paramus
Fair Lawn
Saddle Brook
Lodi
Rutherford
East Rutherford
Carlstadt
Moonachie
Teterboro
Little Ferry
Ridgefield Park
Bogota
Teaneck
Englewood
Tenafly
Cresskill
Demarest
Closter
Alpine
Harrington Park
Northvale
Norwood
Old Tappan
Montvale
Woodcliff Lake
Park Ridge
Hillsdale
River Vale
Westwood
Emerson
Oradell
New Milford
Dumont
Haworth
Cresskill
Demarest
Closter
Alpine
Harrington Park
Northvale
Norwood
Old Tappan
Montvale
Woodcliff Lake
Park Ridge
Hillsdale
River Vale
Westwood
Emerson
Oradell
New Milford
Dumont
Haworth

Petition for Review of Undated Order of Conciliation Commissioner Harry F. Wood, Received by the Farmer Debtor on August 8, 1941

(Filed August 13, 1941)

To the Honorable Harry F. Wood, conciliation commissioner in the matter of Thad Benson Carter, Farmer Debtor Bankrupt, in the United States District Court, Northern District of Ohio, Eastern Division:

The petitioner, Thad Benson Carter, the farmer debtor herein, was a party to the following farmer debtor proceeding pending before Honorable Harry F. Wood, as as conciliation commissioner, namely:

The petition to the judges of said court of the said farmer debtor for a reappraisal of his property pursuant to Section 75 (s) (3) of the Bankruptcy Act, Title 11, Section 203 (s) (3), U.S.C., having been granted by the issuance of an order of said court entered March 21, 1941, directing said conciliation commissioner to have a reappraisement made of said property, said conciliation commissioner thereupon made and issued the following order which is herein complained of, on a date not named by said conciliation commissioner but which order was received by said farmer debtor on August 8, 1941, no notice of the issuance of said order having theretofore been given to or received by said farmer debtor or by his counsel:

Said order reads as follows:

"Re-Appraisal

Time Fixed To Redeem Farm

To the Honorable Paul Jones, Frank Kloeb, and Robert Wilkin, Judges of Said District Court.

I Harry Wood, Conciliation Commissioner to whom the above matter was referred to do hereby submit the following:

I conducted several hearings in which the Debtor Thad Benson Carter was present and was represented

with counsel. Their witnesses were examined and cross-examined by Mr. Kimber, of Akron, attorney for the secured creditors.

The secured creditors were represented by Mr. Kimber who was present at the several hearings, and had the same number of witnesses as the defendant. These witnesses were examined and cross-examined by Mr. McClain attorney for the debtor.

After hearing the testimony given by the several witnesses, and studying the briefs furnished by the defendant and the plaintiff, and upon a personal investigation by the Conciliation Commissioner, of the value of said farm, I hereby fix the value of said farm at $150.00 per acre.

It Is Hereby Ordered that the debtor Thad Benson Carter be given until October 15, 1941 to redeem the farm from the mortgage lien.

It Is Hereby Ordered that the debtor Thad Benson Carter shall not do any planting of any description until after October 15, 1941.

Respectfully submitted,
Harry F. Wood,
Conciliation Commissioner."

SPECIFICATION OF ERRORS

The petitioner, Thad Benson Carter Farmer Debtor, complains of the following errors in respect of said order:

1.

It is erroneous in fixing the valuation of the said 168 acre farm at $150.00 per acre, a total of $25,200, which is more than four and one-third times the appraisal of the same farm theretofore made and approved by said conciliation commissioner in the same farmer debtor proceeding which is now pending.

2.

The valuation of said farm as so fixed is contrary to the evidence.

3.

The valuation of said farm as so fixed is contrary to the weight of the evidence.

4.

The valuation of said farm as so fixed is contrary to law.

5.

The valuation of said farm as so fixed is erroneous because based upon purported evidence not offered or produced at the hearing, or hearings, conducted before the conciliation commissioner, which purported evidence the said farmer debtor had no opportunity to meet by counter evidence or by cross-examination.

6.

The valuation of said farm as so fixed is void because based upon purported evidence not offered or produced at the hearing, or hearings, conducted before the conciliation commissioner, which purported evidence the said farmer debtor had no opportunity to meet by counter evidence or by cross-examination.

7.

Said valuation is erroneous because made and fixed by the conciliation commissioner upon a personal investigation by the conciliation commissioner made outside of and independent of the hearings conducted for the purpose of fixing said valuation which personal investigation neither the petitioner herein nor his counsel was afforded opportunity to offer counter evidence or to cross-examine concerning the evidence adduced by said personal investigation.

8.

Said valuation is void because made and fixed by the conciliation commissioner upon a personal investigation by the conciliation commissioner made outside of and independent of the hearings conducted for the purpose of fixing said valuation at which personal investigation neither the petitioner herein nor his counsel was afforded opportunity to offer counter evidence or to cross examine concerning the evidence adduced by said personal investigation.

9.

Said order is erroneous in not fixing sufficient time within which the said farmer debtor, the petitioner herein, may redeem said farm from the mortgage lien against it.

10.

Said order is void in not fixing sufficient time within which the said farmer debtor, the petitioner herein, may redeem said farm from the mortgage lien against it.

11.

Said order is erroneous in ordering that the farmer debtor, the petitioner herein, shall not do any planting of any description until after October 15, 1941, on his said farm.

12.

Said order is void in ordering that the farmer debtor, the petitioner herein, shall not do any planting of any description until after October 15, 1941, on his said farm.

TRANSCRIPT OF EVIDENCE

The said proceeding conducted before the said conciliation commissioner at said hearings before the conciliation commissioner, together with the evidence offered thereat has been fully reported and transcribed by the reporter selected by agreement of the parties and confirmed by said conciliation commissioner. The original report and transcript made by said reporter has heretofore been delivered to said conciliation commissioner and a copy thereof has been heretofore delivered to counsel for each party represented at said hearings.

Said conciliation commissioner is requested to transmit said report and transcript with this petition for review together with his certificate on this petition for revew to the clerk of the District Court.

PRAYER

Wherefore the said farmer debtor, the petitioner herein, prays that said order, notice and a copy of which were received by him on August 8, 1941, be reviewed and reversed, and for such order as may be just, and further that he be restored to all things he has lost by reason of said errors.

Thad Benson Carter,
By Elmer McClain, Lima, Ohio
His Attorney of Record

Lima, Ohio
August 11, 1941
(Duly Verified)
(Proof of Service)

CONCILIATION COMMISSIONER'S CERTIFICATE ON REVIEW

(Filed September 25, 1941)

To the Hon. Paul Jones, Frank L. Kloeb and Robert N. Wilkin, Judges of the District Court for the Northern district of Ohio:

I, Harry F. Wood, the Conciliation Commissioner in charge of this proceeding, do hereby certify:

That, in the course of such proceeding, an order a copy of which is annexed to the Petition for Review, was made and entered on the 13th day of August, 1941.

That on the 13th day of August, 1941, Thad Benson Carter the Farm Debtor herein feeling aggrieved theroat, filed a petition for Review, which was granted.

That, the errors complained of is that your Conciliation Commissioner order was contrary to law and against the weight of evidence.

That a summary of the evidence, questions presented and my conclusion of the facts are set forth in full in my opinion rendered, which has been sent to the clerk.

I hand up, herewith, for the information of the Judges, the following papers:

1—Application for extended time to file petition for Review.

2—Application for extension of time to file a Brief upon the Petition to Review.

3—Petition for review.

all of which are

Respectfully submitted,
Harry E. Wood,
Conciliation Commissioner

West Richfield, Ohio
September 24, 1941

Appearances: T. W. Kimber, attorney for George A. Kubler—503 Flatiron Bldg., Akron, O. Elmer McClain, attorney for Thad Benson Carter—Lima, Ohio.

Letter of Elmer McClain to Clerk, District Court

November 10, 1941

Honorable C. B. Watkins, Clerk
United States District Court
Cleveland, Ohio

Dear Sir:

Re: Harry F. Wood

Will you please inform me whether Harry F. Wood is a member of the Bar of the United States District Court for the Northern District of Ohio.

Yours very truly,
Elmer McClain

EMcC:V

Letter of Clerk, District Court to Elmer McClain

Cleveland, Ohio
November 12, 1941

Mr. Elmer McClain
Attorney at Law
Lima, Ohio

Dear Sir:

We have searched our roster of attorneys qualified to practice before this Court and are unable to find any record of the admission of Harry F. Wood.

Very truly yours,

C. B. Watkins, Clerk
K. V. Wilson
K. V. Wilson, Chief Deputy

KVW:js

Memorandum.

(Filed November 7, 1941)

Jones, J.:

This proceeding is to review a reappraisement made pursuant to an order of the Court entered March 24, 1941. The sole question presented is one of fact based upon the Conciliation Commissioner's determination of the fair and reasonable value of the debtor's farm. The Commissioner, after hearing testimony of persons called by the farmer-debtor and the secured creditor, made a finding that the fair and reasonable value of the farm, upon reappraisement, is $150.00 per acre. His order fixing such value was made sometime in August of 1941 and the debtor was given until October 15, 1941, to redeem. The debtor challenges the correctness of the Commissioner's findings principally on the ground that the fair value as found by the Commissioner is far in excess of the present fair and reasonable market value and of the original appraisement made some years before (perhaps three years). However, that value, the Commissioner stated, was made for taxation purposes.

The farm in question is in Macedonia, Summit County, Ohio, at the corner of Ledge and Sheppard Roads, the former being an improved highway and the latter a town line road. It consists of 168 acres-plus and is approximately 18 miles from Cleveland and a little farther than that from Akron, Ohio. There are a house and a barn on the farm and some 40 acres of timber land. It was stated by one of the witnesses that the buildings are not in very usable condition and that the fences are very ordinary. The values given by the witnesses called for the secured creditor ranged from approximately $29,000.00 to $33,000.00. The values given by the witnesses called for the farmer-debtor were from $6,500.00 to $12,000.00. This is a wide discrepancy, indicating a broad divergence of opinion as to the value of the farm. Thus is presented a difficult situation to those called upon to make a finding of fair and reasonable market value.

After reading the testimony, it does seem to me that the appraisal is high on the basis of today's conditions and market for farm lands located as this one is. True, it is upon a secondary but improved highway and approximately midway between the populous communities of Cleveland and Akron, and it would seem to border on or lie just outside of the so-called Cleveland metropolitan area. The buildings and fences are probably of little value for appraisal purposes and the timber land probably the same.

Giving effect to all elements upon which the evidence rests, I think that the appraisal is somewhat high, but this is not to say or to intimate that either the secured creditor or the Commissioner overreached or attempted to defeat the farmer-debtor in his opportunity or effort for redeeming his farm. A review of the testimony gives the impression that there is not an active market for farm land, in this location at least, although it has improved somewhat

within the last two or three years. While it may be possible that the land has a potential value for development into the country place class, if and when conditions favorable for such development return, yet it is to be seriously doubted that such a market value ever will exist and it must be regarded as merely speculative, as matters stand. There are no present or prospective developments to justify a fair market value upon such basis. Generally, the rule is that the fair market value is the price which a willing seller could reasonably expect to obtain from a desirous buyer, neither being under necessity.

Viewing the whole matter in an effort to approach and fulfill the duty of the Court under the statute, I think the fair and reasonable market value of the farm, under the evidence before me, is $20,000.00, and I so find and conclude. Since the original date for redemption fixed by the Commissioner expired on October 15, 1941 a new date is hereby fixed. The debtor is given until December 15, 1941, to redeem, failing in which the property shall be sold at public sale.

Jones,
U. S. District Judge

November 7, 1941

Journal Entry

(Filed November 17, 1941)

This cause came on for hearing on petition for review filed on behalf of the farmer debtor, Thad Benson Carter, for a review of the order of the conciliation commissioner finding the present fair and reasonable market value of the farm land in question and fixing a date for redemption, and upon the record, evidence, and the arguments of counsel for the parties, and was submitted to the court.

Upon consideration thereof the court finds that the present fair and reasonable market value of the said land is twenty thousand dollars ($20,000).

The court therefore finds, orders, and adjudges that the present fair and reasonable market value of said farm land is twenty thousand dollars ($20,000).

The court, considering further the question as to the period of time within which the farmer debtor may redeem said described land at said valuation, grants said farmer debtor the right to redeem said farm land until December 15, 1941.

It is the further order and judgment of the court that if said farmer debtor shall not redeem said land on or before December 15, 1941, that said farm land shall be sold at public sale according to law.

Jones,
Judge.

Application for Rehearing.

(Filed December 8, 1941)

Now comes the farmer debtor, Thad Benson Carter, and applies to the court for a rehearing of the matter which was the subject of the Journal Entry of this court entered November 17, 1941, reading as follows:

"JOURNAL ENTRY

"This cause came on for hearing on petition for review filed on behalf of the farmer debtor, Thad Benson Carter, for a review of the order of the Conciliation Commissioner, finding the present fair and reasonable market value of the farm land in queston and fixing a date for redemption, and upon the record, evidence, and the arguments of counsel for the parties, and was submitted to the court.

Upon consideration thereof the court finds that the present fair and reasonable market value of the said land is twenty thousand dollars ($20,000).

The court therefore finds, orders, and adjudges that the present fair and reasonable market value of said farm land is twenty thousand dollars ($20,000.00).

The court considering further the question as to the period of time within which the farmer debtor may redeem said described land at said valuation, grants said farmer debtor the right to redeem said farm land until December 15, 1941.

It is the further order and judgment of the court that if said farmer debtor shall not redeem said land on or before December 15, 1941, that said farm land shall be sold at public sale according to law.

Jones;
Judge."

This petition for rehearing is presented for the consideration of the court for the reason that in the court's memorandum on the subject of the order preceding the entry of said order, which memorandum was filed on or about November 7, 1941, it was said in said memorandum concerning the valuation of $5,800 originally placed upon the real estate in question by the conciliation commissioner: "However that value, the commissioner stated, was for taxation purposes."

Thad Benson Carter, the farmer debtor, respectfully represents to the court that the original valuation of $5,800 was, in the opinion of the conciliation commissioner, the fair and reasonable market value of the said real estate when such valuation was made.

In support of this statement the said Thad Benson Carter presents the following affidavits:

AFFIDAVIT

State of Ohio,
Summit County—ss:

A. S. Neale, being duly sworn, says that he was one of the appraisers who was appointed by the conciliation commissioner, Harry F. Wood, in the Matter of Thad Benson Carter, Farmer Debtor, in Proceedings under Section 75

of the Bankruptcy Act, in Case 33696, in the United States District Court, Cleveland, Ohio; that said appraisers appraised the 168 acre farm of the farmer debtor at $5800, which the said appraisers considered to be the then fair and reasonable market value; that said conciliation commissioner, Harry F. Wood, at the time when the appraisal was reported to him by said appraisers said that $5800 was no more than the farm was worth, and he expressed his agreement with the appraisers in fixing the appraisement of said farm at $5800.

Said 168 acre farm is the farm on which the said farmer debtor, Thad Benson Carter, is now residing and farming, and has been farming for the past several years.

A. S. Neale
A. S. Neale

Sworn to before me and in my presence subscribed this 3rd day of December, 1941.

Carl C. Thompson,
Notary Public.

Notary Seal (Stamp) Carl C. Thompson
Notary Public

My Commission expires July 22, 1944

AFFIDAVIT

State of Ohio,
Summit County—ss:

C. E. Jones, being duly sworn, says that he was one of the appraisers who was appointed by the conciliation commissioner, Harry F. Wood, in the Matter of Thad Benson Carter, Farmer Debtor, in proceedings under Section 75 of the Bankruptcy Act, in Case 33696, in the United States District Court, Cleveland, Ohio; that said appraisers appraised the 168 acre farm of the farmer debtor at $5800, which the said appraisers considered to be the then fair and reasonable market value; that said conciliation com-

missioner, Harry F. Wood, at the time when the appraisal was reported to him by said appraisers said that $5800 was no more than the farm was worth, and he expressed his agreement with the appraisers in fixing the appraisement of said farm at $5800.

Said 168 acre farm is the farm on which the said farmer debtor, Thad Benson Carter, is now residing and farming, and has been farming for the past several years.

C. E. Jones
C. E. Jones

Sworn to before me and in my presence subscribed this 4th day of December, 1941.

A. S. Neale
Justice of the Peace, Summit Co., O.

Wherefore the said Thad Benson Carter, farmer debtor herein, prays the court to rehear the said matter; to reverse the order of the said conciliation commissioner which is the subject of his petition for review herein and that he may have such relief as he may be entitled to in equity and justice.

Thad Benson Carter
Thad Benson Carter
Farmer Debtor.

(Duly verified)
(Proof of Service)

Order

(Filed December 9, 1941)

Application for Rehearing.
Ruling: "Upon due consideration, application denied."

Jones,
Dec. 9, 1941. Judge

Notice of Appeal

(Filed December 15, 1941)

Notice is hereby given that Thad Benson Carter, the farmer debtor above named, hereby appeals to the United States Circuit Court of Appeals for the Sixth Circuit

(1) From the final order and judgment on the petition for review of the order of Harry F. Wood finding that the present fair and reasonable market value of the farmer debtor's farm land is $20,000, and that said farm land shall be sold at public sale according to law if said farmer debtor shall not redeem said land on or before December 15, 1941, entered in this action on November 17, 1941; and

(2) From the final order and judgment entered in this action on December 9, 1941, denying the application of Thad Benson Carter for rehearing of said final order and judgment entered in this action on November 17, 1941.

Elmer McClain and Leon N. Stone
Lima, Ohio
Attorneys for the Appellant,
Thad Benson Carter.

Appeal Bond

Bond for Costs on Appeal in the Sum of $250.00 Filed December 17, 1941.

Stipulation Re Certification of Record

(Filed January 9, 1942)

It is hereby agreed that the record as presented to the clerk may be certified by the clerk as required by law and the rules of the Appellate Court as a true, full and complete copy of the original pleadings, papers and orders used on the trial of this cause as set forth in the Designa

tion for transcript without further comparison by the clerk.

Elmer McClain and Leon N. Stone
Elmer McClain and Leon N. Stone
Attorneys for Appellant.
T. W. Kimber,
T. W. Kimber,
Attorney for Appellee

Concise Statement of Points on Which Appellant Intends to Rely on Appeal

The District Court erred in its order, judgment and decree of November 17, 1941, in the following respects, namely:

1. In adjudging the present fair and reasonable market value of the farmer debtor's land to be $20,000.

2. In ordering said farmer debtor to redeem said land at $20,000 by December 15, 1941.

3. In ordering said farmer debtor's land to be sold at public sale according to law if said farmer debtor shall not redeem said land by December 15, 1941.

4. In basing said order on a statement of the conciliation commissioner that the original appraisal of said land in these proceedings was for taxation purposes.

5. In affirming the conciliation commissioner's order of reappraisement to the extent of adjudging the present fair and reasonable market value of said farmer debtor's land to be $20,000, said conciliation commissioner's order of reappraisement being made and fixed by the conciliation commissioner upon a personal investigation made outside of and independent of the hearings conducted for the purpose of fixing said valuation, neither the farmer debtor nor his counsel being afforded opportunity to offer counter

evidence or to cross examine concerning said personal investigation.

Elmer McClain, Lima, Ohio
Leon N. Stone, Lima, Ohio
Counsel for Appellant.

(Proof of Service.)

Certificate of Clerk

Northern District of Ohio,
Eastern Division—ss:

I, C. B. Watkins, Clerk of the United States District Court within and for said district hereby certify that the foregoing typewritten pages contain a full, true and complete copy of the pleadings and other papers in this cause in accordance with the Designation for Contents of Record on Appeal filed herein.

There is also inclosed herewith original transcript of testimony in question and answer form, in accordance with request contained in letter of T. W. Kimber, Attorney for Secured Creditor, George Kubler, dated January 10, 1942.

In Testimony Whereof, I have hereunto signed my name and affixed the seal of said court at Cleveland, in said district, this 21st day of January, A. D. 1942.

C. B. Watkins, Clerk.
K. V. Wilson,
(Seal) K. V. Wilson, Chief Deputy.

PROCEEDINGS IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE SIXTH CIRCUIT

CAUSE ARGUED AND SUBMITTED—October 9, 1942.

(Before: Hicks, Simons and Martin, JJ.)

This cause is argued by Elmer McClain for Appellant and by T. W. Kimber for Appellee and is submitted to the Court.

JUDGMENT—Entered October 14, 1942.

This cause was heard upon the transcript of the record, briefs and arguments of counsel, and it appearing that there was no abuse of judicial discretion in the finding that the reasonable market value of the farm land in question was $20,000, and no reversible error appearing:

It Is Ordered and Adjudged that the judgments and orders appealed from be and the same are in all things affirmed.

PETITION FOR REHEARING—filed Nov. 12, 1942

This petition for rehearing is presented in typed form by leave of this Court.

To the United States Circuit Court of Appeals for the Sixth Circuit and to the Honorable Judges Thereof:

The appellant presents his petition for rehearing and in support thereof respectfully shows:

I

No opinion has been handed down by this court; the final order merely affirms the orders appealed from, stating as a preliminary that "there was no abuse of judicial discretion in the finding that the reasonable market value of the farm land in question was $20,000".

"Abuse of judicial discretion" is not involved in this case. Neither is "discretion" involved. To the contrary, the applicable part of Section 75, being also a part of the "orderly procedure" of the "mandate of the statute" as characterized by the Supreme Court in the twelve unanimous decisions of that court, requires that the conciliation commissioner "SHALL . . . fix the value of the property in accordance with the evidence submitted." Section 75 (s) (3).

Where it was argued that a district court had a "discretion" to deny a motion for rehearing, based on the ground that the Supreme Court had spoken, the Eighth Circuit Court of Appeals in *Peterson* v. *John Hancock Mutual Life Insurance Company*, (1940), CCA 8, 116 Fed. (2d) 148, said:

> "It is argued by counsel for the appellee that the order overruling the motion for a rehearing entered on January 15, 1940, is not appealable because it is a discretionary order. In this view counsel are mistaken. The motion for rehearing called for judicial decision, not for judicial discretion. Discretion, which must be a legal discretion, does not extend to a refusal to apply well-settled principles of law to a conceded or indisputable state of facts."

II

Section 75 grants no power to the bankruptcy court to deprive him of his property except by the explicit and strict terms of Section 75 which plainly direct the bankruptcy court how to proceed.

It was the departure from this "orderly procedure" and from the "mandate of the statute" that was the basis of the Supreme Court decisions in

Wright v. *Union Central*, (1938), 304 U. S. 502;
John Hancock v. *Bartels*, (1939), 308 U. S. 180;
Gray v. *Union*, (1939), 308 U. S. 523;
Morrison v. *Federal*, (1939), 308 U. S. 524;
Borchard v. *California*, (1940), 310 U. S. 311;
Wright v. *Union Central*, (1940), 311 U. S. 273;
Benitez v. *Bank*, (1941), 313 U. S. 19; and
Wright v. *Logan*, (1942), 315 U. S. 139.

III

It was the same departure from that "orderly procedure" and "mandate of the statute" that formed the basis of the decisions of this court in:

Hoyd v. *Citizens Bank*, CCA 6, (1937), 89 Fed. (2d) 105;
Shadley v. *Ludwig*, CCA 6, (1939), 106 Fed. (2d) 745;
Miller v. *Hatfield*, CCA 6, (1939), 111 Fed. (2d) 28;
Potter v. *Union Central*, CCA 6, (1940), 111 Fed. (2d) 145;
Ellis v. *Connecticut Mutual*, CCA 6 (1940), 111 Fed. (2d) 896;
Walker v. *Detwiler*, CCA 6, (1940), 111 Fed. (2d) 990;
Schriever v. *Oxford*, CCA 6, (1941), 116 Fed. (2d) 683;
Chapman v. *Federal*, CCA 6, (1941), 117 Fed. (2d) 321.

IV

The order of affirmance as it now stands is a radical departure from the consistent decisions of this court which

have generally followed carefully the terms of the statute and the decisions of the Supreme Court.

V

The highest right of a farmer debtor under Section 75 is the culmination of the Act in providing for his opportunity to redeem his property at its fair and reasonable market value. To increase the farm valuation to nearly FOUR AND A HALF TIMES its fair and reasonable market value is as much a denial of the "mandate of the statute" as if he were in so many words denied any right to redeem under Section 75.

VI

If the denial of his appeal grows out of the maxim that "the law overlooks little things", then the farmer debtor repectfully suggests to the court that the principles involved in his appeal are not "little things."

Although the principles contended for by the appellant are of great importance to him personally, they are of far greater importance to the public. There are more persons and more property engaged and involved in agriculture than in any other industry.

Because there are so many individuals engaged in agriculture, no one of them is a match for mortgage holders. As the Supreme Court suggested in *Wright* v. *Union Central*, 311 U. S. 273, the farmer debtor's rights are not to be "dependent on the outcome of his race of diligence with a creditor". In that case, where there was far more reason for sanctioning the bankruptcy court's order to deprive the farmer debtor of his property than here (for here there is none), the Supreme Court said of the facts in that case "to hold that they empowered the court to deprive the debtor of his express and fundamental statutory right to redeem at the appraised value or at the value fixed by the court would be to imply a power of forfeiture wholly incompatible with the broad design of the Act."

The Supreme Court also said in *Wright* v. *Union Central*, 311 Ill. 273:

> "Safeguards were provided to protect the rights of secured creditors, throughout the proceedings, to the extent of the value of the property. . . . There is no constitutional claim of the creditor to more than that. And so long as that right is protected the creditor certainly is in no position to insist that doubts or ambiguities in the Act be resolved in its favor, and against the debtor. Rather, the Act must be liberally construed to give the debtor the full measure of the relief afforded by Congress . . . lest its benefits be frittered away by narrow formalistic interpretations which disregard the spirit and the letter of the Act."

And here there is no room for "narrow formalistic interpretations," for the statute is crystal clear.

In naming a fantastic valuation out of all relation of the "fair and reasonable value of the property", the bankruptcy court flagrantly disregarded and violated not only the spirit but the *express letter of the statute*.

VII

If bankruptcy courts in administering the farmer debtor law under Section 75 of the Bankruptcy Act are to be permitted to disregard the plain purpose of the law and the repeated unanimous expositions of their duty by the Supreme Court and by this court, because only a "little thing" is involved in particular instances, the precedents so established will, as Lincoln said, effectually "cheat the law". All of the enactments of the legislative branch and all of the twelve unanimous decisions of the Supreme Court will tumble down in chaos.

It is suggested that the words of the three dissenting Justices of the Supreme Court in *Union Joint Stock Land Bank* v. *Byerly*, 310 U. S. 1, in support of the decision of this Court in *Byerly* v. *Union Joint Stock Land Bank*, CCA 6, (1939), 106 Fed. (2d) 576, are equally adaptable

here to the final order of the bankruptcy court which in practical effect orders the farmer debtor to surrender and deliver his property to the mortgage holder: "We believe that to deny this farmer the benefits of the Act . . . would be largely to defeat the purposes of the Act". And "To decide otherwise than that the dismissal here did not deprive the farmer debtor of the right to proceed . . . is to permit dismissal at the instance of the farmer's creditors and without the farmer's knowledge to prove a ready means of circumventing the Act". So the dissenting opinion in that case opened and closed, and it is earnestly maintained that the same observations are properly applicable to the order in the present instance.

VIII

Should this act of the bankruptcy court below be allowed to stand, the unremitting hostility during the past nine years of the mortgage holders to the "Supreme Law of the Land" as enacted by the Congress and construed by the Supreme Court and by the preceding decisions of this court has been a remunerative rebellion against the nation. The heaps of money spent to defeat the national will have paid huge dividends, including the expenditure of $63,790.63 for legal fees and expenses by an outsider in a single case where the sum so spent was *fifteen times* the value of the farmer debtor's property which was there involved.

Wherefore the appellant, upon the foregoing grounds, respectfully urges that his petition for rehearing be granted and that upon further consideration the final order of the court below be reversed.

ELMER MCCLAIN,
Counsel for the Appellant,
Thad Benson Carter.

Lima, Ohio
November 3, 1942

Certificate of Counsel

I certify that this petition for rehearing is filed in good faith and not for delay.

Elmer McClain,
Counsel for the Appellant,
Thad Benson Carter.

Proof of Service

A copy of the foregoing petition for rehearing has been served upon counsel for the appellee, T. W. Kimber, Esq., 503 Flatiron Building, Akron, Ohio.

Elmer McClain,
Counsel for the Appellant,
Thad Benson Carter.

ORDER DENYING PETITION FOR REHEARING—
Filed December 3, 1942.

The petition to rehear is denied.

Clerk's Certificate

I, J. W. Menzies, Clerk of the United States Circuit Court of Appeals for the Sixth Circuit, do hereby certify that the foregoing is a true and correct copy of the record and proceedings in the case of Thad Benson Carter *vs.* George A. Kubler, No. 9165, as the same remains upon the files and records of said United States Circuit Court of Appeals for the Sixth Circuit, and of the whole thereof.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of said Court, at the City of Cincinnati, Ohio, this 27th day of January, A. D. 1943.

J. W. Menzies,
Clerk.

(Seal)

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed April 5, 1943

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Sixth Circuit is granted, limited to the first question presented by the petition and the case is transferred to the summary docket. Counsel are requested to discuss in their briefs and on the oral argument the question whether the error, if any, was cured by the District Court's review.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(7217)